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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,362	12/31/2003	Michelle Lynn Hatcher		1891

7590
Michelle Lynn Hatcher
2116 Wesley Ct.
Tallahassee, FL 32303

10/19/2007

EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,362	Applicant(s) HATCHER, MICHELLE LYNN	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,10,11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,10,11 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I in the reply filed on 04 November 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 4, 7-9, 12 and 13 were canceled as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 04 November 2005.

Claim Objections

3. Claims 1, 2 and 11 are objected to because of the following informalities:
 - Claim 1 recites the limitation "the clasp" in the eight line. There is insufficient antecedent basis for this limitation in the claim.
 - Claim 2 recites the limitation "a clasp" between the third and fourth lines. This limitation render the claim indefinite because the eight line of the first claim also recites "the clasp" and it is unclear whether an additional clasp is being claimed or whether a clasp refers to the same clasp being recited in claim 1.
 - Claim 11, line 3, "a beads" should be replaced with --beads--.Correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 6, 10, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bischoff (US 6,789,542 B1).

A designer tracheotomy tube attachment (70) provides a decorative and colorful way to secure a tracheotomy tube and comprises means for securing the attachment (72) to the tracheotomy tube (16) or other neck wearing device, means for stringing decorative ornaments, means for holding together at the ends and means for connecting to the means for securing (C. 5, L. 14-28 and Figs. 1 and 2).

The means for securing the attachment to the tracheotomy tube or other neck wearing device comprises a closed-ended fastener (72) (Figs. 1 and 2).

The means for stringing decorative ornament comprises a stringing line (C. 5, L. 14-28).

The means for holding together at the ends comprises a crimp bead (C. 5, L. 14-28).

A designer tracheotomy tube attachment provides a decorative and colorful way to attach a tracheotomy tube and comprises a closed-ended fastener (72), a stringing line, decorative ornaments and a crimp bead attaching together the ends (C. 5, L. 14-28).

The device attachment further comprises beads that provide the ornamental body of the attachment even though the body of the attachment may be fabricated of beads, decorative metal or any other suitable material connected to the closed ended-fastener (C. 5, L. 14-28) (Figs. 1 and 2).

A designer tracheotomy tube attachment provides a decorative and colorful way to attach a tracheotomy tube and comprises a closed-ended fastener (72), a stringing line and decorative ornaments (C. 5, L. 14-28). The closed ended fastener secures the attachment to the tracheotomy tube (Figs. 1 and 2). Beads are provided as the decorative ornaments of the attachment even though the body of the attachment may be fabricated of beads, decorative metals or any other suitable material connect to the closed ended fastener (C. 5, L. 14-28).

Response to Arguments

6. The Applicant argues that based on the Notices of Non-Compliant Amendment sent on 12 June 2007 whether the restriction requirement made 09 September 2005 was proper. The Examiner has included the section of the Manual of Patent Examining Procedure (MPEP) that provides the basis for making the restriction requirement.

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37 CFR 1.142 Requirement for restriction

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.

(b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

In this case, the two species function differently because the first embodiment used a strand sized to encircle the throat of an user in order to secure the tracheostomy tube in place and the second embodiment was directed to a strap made of cloth and having a buckle that will be used to adjust the size of the strap in order to secure the tracheostomy tube. Also, the original claims do not had a generic claim for both species since both species had different structures to secure the tracheostomy tube. The Examiner explained to the Applicant that the claims directed to the second embodiment should be canceled since the application did not supported an embodiment were the elements of both embodiments were present. The Examiner will like to clarify that all the current and canceled claims must be enumerated in the claim section, just as recited in paragraph 3 of the Office Action mailed on 25 January 2007. The canceled claims should be enumerated and identified as canceled; they should not be left out from the claim section.

7. The argument presented against Bischoff (US 6,789,542 B1) is that the invention cover the tracheostomy tube to hide it and the claimed invention only secures the tracheostomy tube without covering it and without the use of a screen and that the use of a member to cover the tracheostomy tube is not safe. The Examiner fails to be persuaded by this argument. In response to Applicant's argument that Bischoff includes additional structure not required by Applicant's invention, it must be noted that Bischoff discloses the invention as claimed. The fact that it discloses additional structure not claimed is irrelevant. The Examiner acknowledges that Bischoff is also claiming a screen to be secured to the tracheostomy tube, however, Bischoff also discloses the use of a designer tracheostomy tube attachment that is directly engaged with the tracheostomy tube 14 by engaging openings 24 in order to support the tracheostomy tube as recited in lines 60-65 of the third column of Bischoff and in lines 14-28 of the fifth column. The presence of the screen is irrelevant to this case since Bischoff clearly discloses the tracheostomy tube attachment being claimed.

8. The Applicant argues that several patents have been issued with different attachments for tracheostomy tubes and that the claimed invention should be allowed since it is different from Bischoff, the current application does not require a screen. This argument fails to persuade. Several patents may be issued to secure tracheostomy tubes as long as the claims are patentable over the prior art. The different inventions may represent an improvement over the prior art and that is why the claims are allowed. In this case as recited above, Bischoff discloses an tracheostomy tube attachment that

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serves to secure a tracheostomy tube and therefore the presence of the screen is irrelevant to the patentability of the current claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

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Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/RCR/
Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

/James R. Brittain/
Primary Examiner
Art Unit 3677

rcr
October 15, 2007